PSYCHIATRIC FACILITIES REVIEW BOARD

ANNUAL REPORT APRIL 1, 1999 - MARCH 31, 2000

The Psychiatric Facilities Review Board is appointed under the mental health provisions of the Hospitals Act of Nova Scotia. Its primary responsibilities are to review the decision of the treating psychiatrist that a person in a psychiatric facility should be held under 'formal' status and that a person is not capable of consenting to treatment. A person is held under formal status if a psychiatrist has certified that the person (a) suffers from a psychiatric disorder and (b) is a danger either to their own safety or to the safety of others. The Board is also authorized to review competency to administer a patient's estate, where necessary, and to make recommendations as to the treatment, care, or placement of a patient.

These responsibilities and powers are formidable, since they can operate to deprive the individual of the right to make decisions concerning oneself, and authorize detention and treatment against one's wishes even in situations in which no criminal act has been committed. Outside the areas of criminal law and child protection, this power to interfere with individual autonomy is unprecedented. Therefore the Board carries a weighty onus to ensure to the extent possible that its decisions, both in terms of substance and of procedure, are reached in judicious manner within the context of the utmost respect for the rights of the individual whose interests are at stake.

This Annual Report is presented in three parts. Part I presents the statistics as to the Board's operation in the period from April 1, 1999 to March 31, 2000. Part II is an analysis of trends indicated by the statistics. In Part III we bring to the attention of the Legislature issues of note, in particular a serious concern regarding increase in length of detention.

PART 1 - STATISTICS

During its twenty-first year of operation, April 1, 1999 to March 31, 2000, the Board scheduled 12 automatic reviews under section 64 of the Hospitals Act. Of these, 4 were cancelled because the patient was made informal prior to the hearing. Of the 8 automatic reviews held, 7 of the patients were continued under formal status and 1 patient's status was changed to informal.

The Board received 64 requests for review under section 65 of the Hospitals Act. Of the 64, 62 were requested by the patient and 2 by the hospital administration. Of the 64, 29 of the patients were made informal prior to review and 6 requests were withdrawn, resulting in 29 requested reviews being conducted. For 2 of these reviews, the patient's status was informal prior to review but the hearing was held regardless, in one case due to the joint request of the patient and psychiatrist that an issue be reviewed, and in the other because there was not time to notify the Board prior to the hearing. Of the 27 requested hearings held to review formal status, 7 patients were made informal as a result of the review and 20 were continued under formal status. This means that excluding automatic reviews, 26% of patients had their formal status revoked following review.

There were no hearings held under section 60 to determine whether there had been compliance with the requirements for psychosurgery to be performed.

PART 2 - TRENDS

A. Automatic Reviews

Under Hospitals Act section 64, whether or not there has been a request for a hearing, the Board must review the status of each patient held under formal status every six months for the first two years and once per year thereafter. In this past year twelve automatic reviews were scheduled,

of which four were cancelled because the patient was made informal prior to hearing. Last year, in contrast, four were scheduled, of which one was cancelled prior to the hearing. In the year before, three automatic reviews were scheduled and conducted. Looking back historically, in its first four years of operation, the Board held an average of forty automatic reviews per year, and as recently as 1991-92, fourteen automatic reviews were held. While the numbers for this year are certainly lower than those, the increase from last year is dramatic. Clearly the psychiatric units have in the past year been increasing the length of term of hospitalization for some severely ill patients, such that a number of patients are detained for six months or more.

B. Requested Reviews

Non-automatic reviews are commenced primarily by two methods: requests from patients and from hospital administrators. Two requests were made by hospital administrators, a reduction from three in the previous year and eight the year before. A trend to increased patient requests for review appears to have levelled off; 62 were received this year compared to 61 in the previous year and 35 the year before. As noted in Part I, this resulted in 29 hearings being conducted, a decrease from 32 last year. There had been 23 the year before. Replicating the pattern of previous years, following approximately half of all requests, a hearing was held. The remainder were cancelled due to the patient's status being switched to informal prior to review (in 29 cases) or the request being withdrawn (in 6 cases). The patient's status was changed to informal in 7 instances following review (i.e., in 26% of requested reviews). This shows an increase as compared to 1998-99, in which status was changed 4 times (14%), and 5 times in 1997-98 (20%).

When the statistics for automatic and requested reviews are combined, the total number of hearings in 1999-2000 was 37, a slight increase from 35 in 1998-99 and a major increase from 23 in

1997-98.

The average number of days from the date a request for hearing was received to the date the hearing was conducted was 14.8, as compared to15.0 in 1998-99 and 16.2 days on average in 1997-98.

C. Psychosurgery

As in the previous seventeen years, there were no hearings held to determine whether there had been compliance with the requirements for psychosurgery.

PART 3 - COMMENTS

(a) Increase in Length of Detentions: One may conclude from the above statistics that there has not been a substantial increase in the number of times formalization is utilized overall from last year to this, but that there has been a major increase in length of detention such that more automatic reviews are held. In other words, the number of times patients are hospitalized under formal status for six months or longer has increased markedly. It should also be noted that last year as compared to the year before there was a dramatic increase in the number of hearings overall, and in 1999-2000 that number has held constant (and indeed has shown a slight increase again). In its Annual Report for 1998-99, the Board expressed extreme concern about a perceived decline in availability of resources in the area of community services, in particular with regard to community living placements. The spinoff effect was noted as prolonged detention in psychiatric facilities due to the low availability of adequate support in the community. As discussed more fully in last year's Report, in some cases the high likelihood of inordinately rapid deterioration is the reason for detention but if an

appropriately supervised living situation was made available, detention would not be required.

This phenomenon observed last year appears to have now materialized further, as anticipated, in the form of lengthy hospital stays. This is a matter of serious concern in terms of fundamental human rights, including one's basic entitlement within parameters to the least restrictive living situation (again, please refer to the 1998-99 Annual Report for a more detailed discussion). It is also not likely the most cost effective arrangement for government to be utilizing costly hospital beds when many of these individuals could be living in the community if proper supervised facilities were available.

(b) Education: The Board continued its educative function in that the Chair gave a presentation on "Proposed Revision of Mental Health Provisions of the Hospitals Act" as part of the Dalhousie Health Law Institute Seminar Series. Also, similarly to the previous year, the Chair gave a seminar presentation to psychiatric residents at the QE11 Health Sciences Centre on issues regarding civil commitment, capacity to consent to treatment, and competency to administer one's estate.

(c) Reviews: The Board is gratified to note that two major reviews of the delivery of mental health services in Nova Scotia are presently underway. First, the Law Reform Commission of Nova Scotia is reviewing the mental health provisions of the Hospitals Act, i.e., those provisions directly relevant to the work of the Psychiatric Facilities Review Board. Second, the Department of Health has undertaken a review of Nova Scotia's mental health system, conducted by external reviewers. The Chair of the Psychiatric Facilities Review Board is an active participant in both of these processes. It is anticipated that next year's annual report

will discuss the recommendations emanating from each of these reviews.

In conclusion, the Board is encouraged by the reviews underway and hopeful that they will result in positive reforms. We are, however, concerned with the trends revealed by the statistics over the last few years, i.e., increased use of formalization combined with increased length of detention. We call upon the government to provide effective community resources for mental health consumers to stem this extremely problematic and disturbing tide.